IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 78 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BABUBHAI GOVINDBHAI DALSANIA

Versus

STATE OF GUJARAT

Appearance:

MR DP KINARIWALA for Petitioner

MR ND GOHIL, APP for Opponent No. 1 - State

MR ND SONEGARA for MR DEEPAK V PATEL for Opponent No. 2

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 26/12/2002

ORAL JUDGEMENT

1. The original complainant of Criminal Case No.2632 of 1991, which came to be tried and disposed of by the learned Metropolitan Magistrate, Court No.10, Ahmedabad [for short as the "Metropolitan Magistrate"] has, by

preferring this Criminal Revision Application No.78 of 1998 challenged the correctness, legality, propriety and regularity of the judgment Ex.21 dated 07.09.1997 rendered by the learned Additional City Sessions Judge, City Sessions Court, Court No.10, Ahmedabad [for short as the "Additional City Sessions Judge"] in Criminal Appeal No.15 of 1996, by which the judgment of conviction rendered by the learned Metropolitan Magistrate, was confirmed, but an order of sentence was modified by making reduction in quantum of sentence.

2. The facts leading to this present Criminal Revision Application in a nutshell are as follows :-

2.1 The present criminal revision petitioner being a complainant lodged his complaint on 07.10.1991 in the Court of the learned Metropolitan Magistrate, against the present revision opponent No.2 alleging that the accused has committed the offences punishable under Sections 323, 324, 325 and 504 of Indian Penal Code [for short "I.P.C."]. Instead of taking cognizance by the learned Metropolitan Magistrate, he sent that the complaint for investigation under Section 156(3) of Criminal Procedure Code, 1973 [for short "Cr.P.C.] to the Police Inspector of Gomtipur Police Station. The concerned police officer investigated the case and, ultimately, he filed a charge-sheet against the present revision opponent No.2 for the offences punishable under Sections 323, 324, 325 and 504 of I.P.C. That charge-sheet came to be registered as Criminal Case No.2632 of 1991. That case was tried summarily. On recording the plea of the accused, he pleaded not guilty to the charge and claimed to be tried. The prosecution examined certain witnesses and produced certain documents. Thereafter, after appreciating the evidence on record and after hearing the learned advocates for both the parties, he rendered his judgment Ex.4 on 24.01.1996 in the said Criminal Case No.2632 of 1991 and by that judgment, the present revision opponent No.2 being the accused was convicted under Section 248(2) of the Cr.P.C. for the offence punishable under Section 325 of I.P.C. and he was sentenced to undergo rigorous imprisonment for one and half year and to pay a fine of Rs.1,000/-- and in default, to undergo imprisonment for further two months.

3. Being aggrieved against and dissatisfied with the said judgment Ex.4 of conviction and sentence rendered by the learned Metropolitan Magistrate, the original accused preferred a Criminal Appeal No.15 of 1995 to the City Sessions Court, Ahmedabad. The learned Additional City Sessions Judge, after re-appreciating the evidence and

after hearing the learned advocates for both the parties, partly allowed that Criminal Appeal No.15 of 1996 and maintained conviction and by his judgment Ex.21 dated 07.09.1997, he modified the order of sentence. By his judgment Ex.21, he set aside the order of sentence directing the accused to undergo rigorous imprisonment of 18 months and instead of that sentence, the learned Additional City Sessions Judge, passed an order of sentence directing the accused - appellant before him to undergo simple imprisonment for one day till rising of Court and to pay a fine of Rs.5,000/-- and in default of fine to undergo further simple imprisonment for one year. He also directed that out of the fine realized from the accused, an amount of Rs.4,000/-- be paid to the complainant.

4. Being aggrieved against and dissatisfied with the said judgment Ex.21 dated 07.09.1997 rendered by the Additional City Sessions Judge in Criminal Appeal No.15 of 1996, the present criminal revision petitioner being complainant has filed this present Criminal Revision Application.

5. I have heard Mr.D.P.Kinariwala, learned advocate for the criminal revision petitioner, Mr.N.D.Gohil, learned APP for the revision opponent No.2 i.e. State of Gujarat and Mr. N.D. Sonegara for Mr. Deepak V. Patel for revision opponent No. 2.

6. In this Criminal Revision Application, the judgment Ex.21 of the learned Additional City Sessions Judge, is challenged. During the course of hearing, the appellant before him i.e. accused, had passed a purshis to the effect that he did not want to contest the appeal on merits, but he wanted to pray for mercy and, therefore, the order of conviction is not challenged, but only an order of sentence is challenged. The learned Additional City Sessions Judge has reduced the sentence from rigorous imprisonment for 18 months and to pay a fine of Rs.1,000/-- and in default of fine, to undergo simple imprisonment for one year, to sentence of simple imprisonment of one day till rising of the Court and to pay a fine of Rs.5,000/--, and in default of fine to undergo simple imprisonment of one year meaning thereby the learned Additional City Sessions Judge enhanced the fine and reduced the sentence to simple imprisonment for one day till rising of the Court.

7. Mr.D. P. Kinariwala, learned advocate for the criminal revision petitioner has argued that looking to the injury sustained by the complainant, the learned City

Sessions Judge has shown a misplaced sympathy to the accused. By reading the impugned judgment, Ex.21, he has shown that the complainant had sustained the following injuries.

[1] swelling on right foot and right sole of the foot, and
[2] a minor fracture on the right leg, right toe and on nose.

He has argued that looking to the fact that the complainant had sustained a grievous injury of fracture, the learned Additional City Sessions Judge, ought not to have reduced the sentence for the period till rising of the Court and, therefore, the judgment is illegal, perverse and it requires to be modified.

8. Mr.N. D. Gohil, learned APP for the revision opponent No.1 - State of Gujarat has supported the judgment Ex.21 of conviction rendered by the Appellate Court. Mr.Gohil has also supported the argument of Mr.D.P.Kinariwala, learned advocate for the criminal revision petitioner.

9. It is true that to impose a particular sentence, is within the discretion of the Judge concerned. The learned Metropolitan Magistrate had, after considering the evidence on record, inflicted the sentence of rigorous imprisonment for 18 months and to pay a fine of Rs.1,000/-- and in default of fine, to undergo further imprisonment for two months. The learned Additional City Sessions Judge, has interfered with the quantum of sentence, by assigning the reasons. He has observed in his judgment Ex.21 that the portions of the body, which had sustained injuries, were so delicate that if some object is struck with slight force, it will result in minor fracture on these delicate parts of the body. He has considered the nature of injuries and, therefore, after considering the nature of injuries, the facts and circumstances of the case and considering the arguments of the learned advocate for the appellant before him, he has modified the order of sentence.

10. In support of his arguments, Mr.D.P.Kinariwala has cited the following two decisions :

[1] Smt. Mathri and others Vs. The State of Punjab, reported in AIR 1964 S.C. 986.

[2] Sadha Singh and another Vs. State of Punjab, reported in AIR 1985 S.C. 1130.

11. I do agree with the proposition of the law, laid down in the aforesaid two decisions. Each case is decided on its own merits. Looking to the facts and circumstances of the case, herein this case, the learned Additional City Sessions Judge has exercised his jurisdiction, after considering the nature of injuries. He had jurisdiction to consider the quantum of sentence. He has assigned plausible and possible reasons to reduce the sentence, and, therefore, this Court finds that there is no illegality in the order of the learned Additional City Sessions Judge. The order of the learned Additional City Sessions Judge, cannot be said to be illegal or incorrect or perverse and, therefore, this Court is of the view that this is not a case in which the Court should interfere by exercising the revisional powers.

12. In view of the foregoing reasons, this Criminal Revision Application deserves to be dismissed and accordingly, it is dismissed. Rule is discharged.

[H. H. Mehta,J.]

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